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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,660	07/28/2003	Earl W. Clausen	032722-571	4451

46909 7590 06/10/2005

TERUMO CARDIOVASCULAR SYSTEMS CORPORATION
6200 JACKSON ROAD
ANN ARBOR, MI 48103

EXAMINER

MICHALSKY, GERALD A

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/627,660

Applicant(s)

CLAUSEN ET AL.

Examiner

Gerald A. Michalsky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>28 July 2003</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

1. The reissue declarations filed thus far are deficient in a number of areas.

Reissue applications must include an oath/declaration that complies with 37 CFR 1.175.

The first paragraph of 37 CFR 1.175 states that the declaration must comply with the

requirements of 37 CFR 1.63. Currently, the declarations fail to comply with 1.63(a)(3)

– citizenship of inventors; 1.63(c)(1) – mailing address and residence of inventors;

1.63(b)(2) – indicating that the person signing the declaration has reviewed and

understands the contents of the application including the claims as amended; 1.63(b)(3)

– acknowledgement of a duty to disclose information material to patentability as defined

by 37 CFR 1.56. The assertion that the information regarding the inventors is not

needed is incorrect. The rules require this information. Applicants have made an

attempt to show that the PTO does not require the information. However, applicants

have submitted a copy of an outdated PTO approved declaration which provides only

page one of the approved form. Page 2 of that version of the declaration did have a

section for the information. Further the declaration filed 29 December 2003 states that

the “error is characterized by the fact that at least claims 1, 19, and 38 may be invalid...”

and then states that “That error arose without an deceptive intent”. However, claim 43

has been amended, in addition to the 3 claims specified in the declaration. Thus, by not

mentioning claim 43 or stating that all errors being corrected by this reissue application

arose without deceptive intent, the clause regarding deceptive intent does not cover the

error being corrected by amended claim 43. A new or supplemental reissue declaration

correcting these deficiencies is required. A currently approved form for a reissue

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application declaration filed by the assignee can be found in Section 1414 of the Manual of Patent Examining Procedure as revised May 2004.

2. Claims 1-45 are rejected as being based upon defective reissue declarations under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declarations is set forth in the discussion above in this Office action.

3. Claims 1-45 avoid the art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerald A. Michalsky whose telephone number is (571) 272-4917. The examiner can normally be reached on M-F 5:30 AM - 2 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (571) 272-4930. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gerald A. Michalsky
Primary Examiner
Art Unit 3753